

A lessor engaged in selling like-kind tangible personal property will incur Retailers' Occupation Tax liability on sales of off-lease tangible personal property. See 86 Ill. Adm. Code 130.2013(h). (This is a GIL.)

July 15, 2005

Dear Xxxxx:

This letter is in response to your letter dated January 8, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC has a long history of diligently collecting and remitting Sales and Use tax to the State of Illinois as attested to by any state audits of our business. ABC is a distributor of forklift equipment and in the normal course of business, we lease equipment to end users. We are listed on the contract as the lessor of the equipment. As such, we assess use tax and remit to the state. We then assign these contracts to a lease company. These leases are true leases with no lessee ownership at contracts end.

Enclosed is a letter ruling which describes our circumstances 100%. ABC is the lessor of the equipment. There is no doubt that the transaction is a true lease, there-by [sic], subject to Use Tax on the purchase price of the equipment as per the first paragraph of the answer to question #1 on page 2 of the letter ruling.

The next paragraph under question #1 on page 2 states that when you sell the equipment to the leasing company, you incur a Retailers Occupation Tax obligation only to the extent that the sales price of the equipment to the leasing company exceeds your acquisition cost.

This seems to be a common sense approach to the transaction in question. If the department has since changed this approach, I would like to see something stating when a change in thinking occurred and some reasoning behind the change.

Thank you very much for your anticipated timely response.

DEPARTMENT'S RESPONSE:

When a lessor in a true lease situation subsequently sells a leased item, he may or may not incur a Retailers' Occupation Tax liability depending upon whether the lessor is otherwise engaged in selling like-kind items at retail. You are correct that if a lessor is engaged in selling that type of item at retail, the lessor will incur Retailers' Occupation Tax liability on the sale of the leased property. However, the lessor would be entitled to take a credit for taxes previously paid on the item to the extent that the credit does not exceed the amount of Retailers' Occupation Tax incurred by the lessor/retailer when he sells that item. See 86 Ill. Adm. Code 130.2013(h). This provision reorganizing this credit was added to the Department's administrative rules on January 17, 2002. You may view the Department's regulations on the Department's internet website described below.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk